IN THE HIGH COURT OF JUDICATURE AT BOMBAY

TESTAMENTARY & INTESTATE JURISDICTION

NOTICE OF MOTION NO.2298 OF 2004

IN

TESTAMENTARY PETITION NO.749 OF 2003

IN

SUIT NO.20 OF 2004

Shri.Mahesh Kishandas Shroff & others. ...Plaintiffs.

vs.

Ms.Sushila Mehta & others. ...Defendants.

Mr.D.D.Madan with Cyrus Adreshir, N.R.Gandhi i/b. Rustamji & Ginwala, for Plaintiffs.

Mr.Dinesh Thakkar i/b. Khaitan & Jaykar, for Respondent no.3.

CORAM: D.K.DESHMUKH,J.

DATED: 14th September,2006.

P.C.:-

1. This is a notice of motion taken out by the plaintiffs who have filed petition for probate of the Will of deceased Yashwantilika Narottamdas. A caveat has been filed by Sushila Mehta. This notice of motion has been taken out by the executors of the Will who have filed

petition for probate, for setting aside the caveat, because according to the plaintiffs, the caveatrix cannot claim any interest in the estate of the deceased. For that purpose, the petitioners/plaintiffs relied on a family tree produced by the Caveatrix alongwith her affidavit dated 21.5.2004. According to that family tree, one Bechardas had three sons Maganlal, Kalyandas and Narottamdas. The deceased was the daughter of Narottamdas. It is common ground that everybody belonging to the branch of Narattomdas has pre-deceased Yashwantilika-the testator. Therefore, in terms of the provisions of section 15(1)(d) of Hindu Succession Act the property will go to the heirs of the father -Narottamdas. In terms of section 8 of the Hindu Succession Act as Mr.Narottamdas did not have any heir belonging to class I of the Schedule living when Yashwantilika died, it will go to the heirs of her father in class II. It is common ground that Gunvanti who was the daughter of Kalyandas and was admittedly living when the probate petition was filed, will have interest in the estate of the deceased she being the testator's father's brother's daughter. The Caveatrix admittedly is the grand daughter of Maganlal being his daughter's daughter. In terms of the provisions of Section 9 of the Act the presence of Gunvanti excludes Sushila, and therefore, she will not have interest in the estate of the deceased. The fact that Gunwanti died subsequently in the month of May,2004 will not be relevant. Perusal of the affidavit filed by the petitioners shows that this position

is clearly explained in the affidavit, and the reply filed by the Caveatrix shows that her reply is evasive. It is thus clear that the Caveatrix did not have any interest in the estate of the deceased when the caveat was filed in the month of May,2004 and therefore, the notice of motion deserves to be granted in terms of prayer clause (a). It is accordingly, so granted.